

IN THE UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF ALABAMA  
MIDDLE DIVISION

BEN L. BUFFINGTON, JR.,

Plaintiff,

V.

ALAN KAY, et al.,

Defendants.

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4:09-cv-02558-SLB-JEO

## MEMORANDUM OF OPINION

The magistrate judge filed a report and recommendation on April 8, 2010, recommending that all claims **EXCEPT** for the plaintiff's Eight Amendment claims against defendants Theakston and Kay regarding the alleged delay in medical treatment for his diabetes for the period of July 22, 2008 through August 7, 2008, be **DISMISSED** pursuant to 28 U.S.C. § 1915A(b)(1) and/or (2). The magistrate judge further **RECOMMENDS** that the plaintiff's Eight Amendment claims against defendants Theakston and Kay regarding the alleged delay in medical treatment for his diabetes for the period of July 22, 2008 through August 7, 2008 be referred to the undersigned magistrate judge for further proceedings. No objections were filed by any party.

Having carefully reviewed and considered *de novo* all the materials in the court file, the court is of the opinion that the magistrate judge's report is due to be and is hereby **ADOPTED** and the recommendation is **ACCEPTED**. Accordingly, all claims **EXCEPT** plaintiff's Eight Amendment claims against defendants Theakston and Kay regarding the alleged delay in medical treatment for

his diabetes for the period of July 22, 2008 through August 7, 2008 be dismissed pursuant to 28 U.S.C. § 1915A(b) for failing to state a claim upon which relief may be granted.

DATED this 27th day of May, 2010.

A handwritten signature in black ink, reading "Sharon Lovelace Blackburn". The signature is written in a cursive, flowing style. Below the signature is a solid horizontal line.

SHARON LOVELACE BLACKBURN  
CHIEF UNITED STATES DISTRICT JUDGE